

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

JAMES MICHAEL FLIPPO,

Petitioner,

v.

CIVIL ACTION NO. 5:05-cv-00765

THOMAS MCBRIDE, Warden,

Respondent.


**MEMORANDUM OPINION AND ORDER**

Pending before the court is the petitioner's motion under 28 U.S.C. § 2254 to vacate, set aside or correct sentence and his application to proceed *in forma pauperis*. This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the petitioner's applications to proceed *in forma pauperis*, direct the petitioner to submit the \$5.00 filing fee within twenty days from the entry of this court's order, and refer this matter back to the Magistrate Judge for the scheduling of further proceedings. Since the filing of the Magistrate Judge's proposed findings and recommendations, the Petitioner has submitted his \$5.00 filing fee, and neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, **DENIES** the petitioner's application to proceed *in forma pauperis*, **FINDS** the petitioner has paid his \$5.00 filing fee, and refers this matter back to the Magistrate Judge for the scheduling of further proceedings.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: April 11, 2006



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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE